

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

HOLLYMEAD TOWN CENTER, LLC

VWP Permit No. WP4-03-0435

SECTION A: Purpose

This is a Special Order by consent issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d) between the State Water Control Board and Hollymead Town Center, LLC to resolve certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 62.1-44.7 and 10.1-1184.
3. "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the DEQ.
5. "DEQ-VRO" means the Valley Regional Office of the DEQ.
6. "The Project" means the Hollymead Town Center Project, Area A & B.
7. "VWP Regulation" means the Virginia Water Protection Regulation, 9 VAC 25-210-10 *et seq.*
8. "Order" means this document, also known as a Consent Special Order.
9. "ULCA" means the United Land Corporation of America, Inc.
10. "Hollymead" means Hollymead Town Center, LLC.
11. "Regency" means Regency Centers, Inc.
12. "The Permit" means VWP Permit No. WP4-03-0435 issued to Regency for the Project.

SECTION C: Findings of Fact and Conclusions of Law

1. Regency is a Florida Corporation.
2. Hollymead is a Delaware Limited Liability Corporation.
3. ULCA is a Virginia Corporation in good standing.
4. The Project is a commercial real estate development located along Route 29 in Albemarle County south of the Regional Airport.
5. On May 29, 2003, DEQ issued coverage to Regency under the Permit for activities associated with construction of the Project. The Permit authorizes Regency to fill 0.14 acre of Palustrine Emergent wetlands, 0.02 acre Palustrine Open Waters and 1,464 linear feet of intermittent stream channel for the development of the Project. Under the terms of the Permit, impacts are to be mitigated on site at a 1:1 ratio.
6. On October 21, 2003, DEQ staff performed an inspection of the Project to evaluate compliance with the Permit. Staff observed that construction of the Project had commenced by ULCA and that impacts authorized by the Permit had occurred. Staff also observed that impacts had occurred that were outside of the scope of those authorized under the Permit. Among other things, staff observed that 17 linear feet of an unnamed tributary of Powell Creek located outside of the permitted impact area had been impacted by ULCA's construction activities. At a later date, a representative of Hollymead indicated to DEQ staff that a copy of the Permit had been provided to ULCA. Staff also observed that the Project construction site,

which is approximately 44 acres in size, was configured to discharge stormwater from the site into an unnamed tributary of Powell Creek. Staff noted that the Project construction site had not been issued coverage under a General VPDES Permit authorizing discharge of stormwater from the Project construction site.

7. On October 29, 2003, staff of DEQ met with representatives of ULCA and Regency to discuss the apparent violations observed during the October 21, 2003, inspection. The representatives of Regency and ULCA advised DEQ that the Project would be divided in two (separating Areas A & B) and that Regency and ULCA would be developing the areas separately. DEQ staff advised Regency and ULCA that it was advisable to separate the Project into two VWP permits according to ownership. During the meeting, ULCA submitted a registration statement for the entire Project for coverage under a General VPDES Permit for construction site stormwater management. Hollymead has indicated its intent to DEQ to change ownership under the modification of the Permit from Regency to Hollymead.
8. Coverage under VPDES General Permit No. VAR103071 for construction site stormwater management was issued to ULCA on October 30, 2003.
9. On November 14, 2003, DEQ-VRO issued Notice of Violation No. 03-11-VRO-3 ("NOV") to Regency citing the following violations of State Water Control Law, the VWP Regulation and the Permit:
 - a. In apparent noncompliance with the Permit, dredging, filling or discharging of pollutants into, or adjacent to surface waters; otherwise altering the physical, chemical or biological properties of surface waters; excavating in wetlands; conducting the following activities in a wetland: (1) activities to cause draining that significantly alters or degrades existing wetland acreage or functions; (2) filling or dumping; and (3) activities that cause significant alteration or degradation of existing wetland acreage or functions in apparent violation of Part III.A of the Permit and 9 VAC 25-210-50.A of the VWP Regulation; and,
 - b. Commencing construction activity in the permitted impact areas prior to receipt of DEQ's approval of the compensatory mitigation plan in apparent violation of Part II.A.3 of the Permit;
 - c. Failure to establish photostations to document the construction aspects of project activities within impact areas authorized by the Permit in apparent violation of Part II.D.1 of the Permit;
 - d. Failure to notify DEQ in writing by certified letter at least 10 days prior to the start of construction activities authorized by the Permit in apparent violation of Part II.E.2 of the Permit; and,

- e. Failure to clearly flag or mark all non-impacted wetlands within the project or right-of-way limits that are within 50 feet of any clearing, grading, and/or filling activities in apparent violation of Part I.C.10 of the Permit.
10. The Order requires Hollymead to modify its VWP Permit for that portion of the Project it will develop. The Order also assesses a civil charge in settlement of the apparent violations.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Hollymead, and Hollymead agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Hollymead, and Hollymead voluntarily agrees, to pay a civil charge of **\$ 3,500** within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the “Treasurer of Virginia”, delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

Hollymead shall include its Federal Identification Number with the civil charge payment and shall note on the check that payment is being made pursuant to this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Hollymead, for good cause shown by Hollymead, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein including those matters addressed in NOV No. 03-11-VRO-3. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Hollymead admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Hollymead consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Hollymead declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and waives its right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver by Hollymead of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Hollymead to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Hollymead shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Hollymead shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Hollymead shall notify the Regional Director of the VRO in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and,
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director of the VRO within 24 hours of learning of any condition above, which Hollymead intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns,

jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Hollymead. Notwithstanding the foregoing, Hollymead agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Hollymead. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Hollymead from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Hollymead voluntarily agrees to the issuance of this Order.

And it is so ORDERED this ____ day of _____, 2004.

Robert G. Burnley, Director
Department of Environmental Quality

Hollymead voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this ____ day of _____, 2003, by _____, who is
(name)

_____ of Hollymead, on behalf of Hollymead.
(title)

Notary Public

My commission expires: _____.

**APPENDIX A
SCHEDULE OF COMPLIANCE**

HOLLYMEAD TOWN CENTER, LLC

1. **By January 31, 2004**, Hollymead shall submit to DEQ's Valley Regional Office, a complete application for modification of the Permit covering that portion of the Project site to be developed by Hollymead. The application for modification of the Permit shall include Hollymead's plan for mitigation of the impacts to be taken under the Permit.
2. Hollymead shall respond to any comments made by DEQ on the application for modification of the Permit or on the mitigation plan **within 30 days** of receipt of the comments.